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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH ANTONETTI,

Plaintiff,

vs.

E.K. MCDANIELS, *et al.*,

Defendants.

3:16-cv-00396-MMD-WGC

ORDER

Re: ECF No. 50

Before the court is Plaintiff's Motion for Appointment of Counsel (ECF No. 50). Plaintiff's motion claims that (1) Plaintiff is unable to adequately pursue discovery and/or motion the court because he was sent to New Mexico Department of Prisons where he can only send out two letters a week, (2) Plaintiff has no access to law library or access to any Nevada or 9th Circuit case law, (3) Plaintiff is unable to read anything cited by the court or Attorney General's Office, and (4) Plaintiff is unable to argue or prepare motions, determine rights, and research. (*Id.*) Plaintiff further states that "New Mexico only provides (2) two pieces of paper a week and does not provide supplies for legal work." (*Id.* at 2.)

A litigant in a civil rights action does not have a Sixth Amendment right to appointed counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme Court has generally stated that although Congress provided relief for violation of one's civil rights under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to federal court and not a right to discover such claims or even to litigate them effectively once filed with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

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1 In very limited circumstances, federal courts are empowered to request an attorney to represent
2 an indigent civil litigant. The circumstances in which a court will grant such a request, however, are
3 exceedingly rare, and the court will grant the request under only extraordinary circumstances. *United*
4 *States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986); *Wilborn v. Escalderon*, 789 F.2d
5 1328, 1331 (9th Cir. 1986).

6 A finding of such exceptional or extraordinary circumstances requires that the court evaluate both
7 the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to articulate his claims
8 in light of the complexity of the legal issues involved. Neither factor is controlling; both must be viewed
9 together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991), *citing Wilborn*,
10 *supra*, 789 F.2d at 1331. Plaintiff has shown an ability to articulate his claims in this case and many
11 others.¹

12 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

13 If all that was required to establish successfully the complexity of the
14 relevant issues was a demonstration of the need for development of
15 further facts, practically all cases would involve complex legal issues.
16 Thus, although *Wilborn* may have found it difficult to articulate his
claims *pro se*, he has neither demonstrated a likelihood of success on the
merits nor shown that the complexity of the issues involved was
sufficient to require designation of counsel.

17 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying the
18 request for appointment of counsel because the Plaintiff failed to establish the case was complex as to
19 facts or law. 789 F.2d at 1331.

20 Despite Plaintiff having asserted multiple claims against a broad range of officials and employees
21 of the Nevada Department of Corrections, the substantive claims involved in this action are not
22 unduly complex. Plaintiff's First Amended Complaint was allowed to proceed on the following claims:
23 Count I - alleging retaliation and due process violations against Defendants Moore, Dugan,

24
25 ¹ Plaintiff is also no stranger to litigation and the court notes his involvement in the following civil rights lawsuits:
26 *Antonetti v. Neven, et al.*, 2:07-cv-00162-MMD-VCF; *Antonetti v. Neven, et al.*, 2:08-cv-01020-APG-VCF; *Antonetti v.*
27 *Skolnick*, 2:09-cv-02031-RLH-PAL; *Antonetti v. Las Vegas, Nevada, Co. Clark, et al.*, 2:13-cv-00064-RFB-NJK;
28 *Antonetti v. Skolnick, et al.*, 3:10-cv-00158-LRH-WGC; *Antonetti v. Obama, et al.*, 3:11-cv-00452-ECR-RAM;
Antonetti v. Obama, et al., 3:11-cv-00548-LRH-WGC; *Antonetti v. Foster, et al.*, 3:14-cv-00495-JAD-VPC; *Antonetti v.*
McDaniels, et al., 3:16-cv-00396-MMD-WGC; *Antonetti v. Filson, et al.*, 3:17-cv-00605-MMD-CBC; and *Antonetti v. Cox,*
et al., 3:18-cv-00067-MMD-CBC.

1 Caseworker Sandoval, Fletcher, Baker, Byrnes, Gittere, Deal, McDaniels, Foster and Southworth;
2 Count II - alleging retaliation against Defendants Sisco, McDaniels, Foster, Deal, Moore, Dugan,
3 Caseworker Sandoval, Baker, Byrnes, Fletcher, Gittere, and Kerner; portion of Count II - alleging denial
4 of access to the courts against Defendants Sisco, McDaniels, Foster, Deal, Moore, Dugan,
5 Caseworker Sandoval, Baker, Byrnes, Fletcher, Gittere, Kerner, Williams, and Governor Sandoval;
6 Count III - alleging retaliation against Defendants Boyd and Kerner; portion of Count III - alleging mail
7 violations against Defendants McDaniels, Sisco, Foster, Deal, Baker, Byrnes, Fletcher, Gittere, Kerner,
8 and Boyd; portion of Count IV - alleging retaliation against Defendants Boyd and Kerner; portion of
9 Count IV - alleging mail violations against Defendants McDaniels, Foster, Deals, Sisco, Baker, Byrnes,
10 Fletcher, Gittere, Kerner, and Boyd; portions of Count V - alleging a First Amendment retaliation claim,
11 a First Amendment claim regarding mail and publications, and a Fourteenth Amendment equal
12 protection claim against Defendants Sergeant Boyd, Lester, Baker, Byrnes, McDaniels, Foster, Kerner,
13 Deal, Sisco, Fletcher, B. Williams, and Caseworker Sandoval; Count VI - alleging conditions of
14 confinement against Defendants McDaniels, Foster, Deal, Sisco, Baker, Byrnes, Fletcher, Gittere, and
15 Hampton; Count VII - alleging a due process claim and a retaliation claim against Defendants Ms. Boyd,
16 Sergeant Boyd, Kerner, Baker, Byrnes, Fletcher, McDaniels, Deal, Sisco, Foster, Williams, Southworth,
17 Moore, Gittere, Neven, Dudely, and Lester; Count VIII - alleging due process violations against
18 Defendants McDaniels, Foster, Deal, Sisco, Baker, Byrnes, Fletcher, Gittere, Southworth, and Moore;
19 Count X - alleging conditions of confinement violations against Defendants McDaniels, Foster, Deal,
20 Sisco, Williams, Baker, Byrnes, Fletcher, Gittere, and Southworth; Count XI - alleging due process
21 violations against Defendants McDaniels, Foster, Deal, and Sisco; and Count XII - alleging an Eighth
22 Amendment claim for deliberate indifference to serious medical needs, an Eighth Amendment failure
23 to protect claim, and a Fourteenth Amendment equal protection claim against Defendants McDaniels,
24 Neven, Foster, Sisco, Deal, B. Williams, Baker, Byrnes, Fletcher, Gittere, Caseworker Sandoval, Moore,
25 and Southworth. (ECF No. 15 at 23, 24.) Again, despite the numerosity of claims and Defendants, these
26 claims are not so complex that counsel needs to be appointed to prosecute them.

27 Similarly, with respect to the *Terrell* factors, Plaintiff has again failed to convince the court of
28 the likelihood of success on the merits of his claims. In fact, Plaintiff includes no discussion of the merits

1 of any of his claims.

2 While any *pro se* inmate such as Mr. Antonetti would likely benefit from services of counsel,
3 that is not the standard this court must employ in determining whether counsel should be appointed.
4 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

5 The court does not have the power "to make coercive appointments of counsel." *Mallard v. U. S.*
6 *Dist. Ct.*, 490 US 296, 310 (1989). Thus, the court can appoint counsel only under exceptional
7 circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130 S.Ct. 1282 (2010)].
8 Plaintiff has not shown that the exceptional circumstances necessary for appointment of counsel are
9 present in this case.

10 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of
11 Counsel (ECF No. 50).

12 **IT IS SO ORDERED.**

13 DATED: May 10, 2019.

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16 WILLIAM G. COBB
17 UNITED STATES MAGISTRATE JUDGE
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